

Docket No. 01-0706  
Staff Motion to Take Administrative Notice

EXHIBIT A

Transcript of Thomas E. Zack, pp. 735-743, from Docket No. 01-0707

1 Harrington. Zack Exhibit No. 3 is a gas loss work --  
2 work claim.

3 (Whereupon, Zack Cross  
4 Exhibit Nos. 1 through 6  
5 were admitted into evidence.)

6 JUDGE SAINSOT: Okay. Who's going next? You  
7 are? Okay.

8 CROSS-EXAMINATION

9 BY

10 MR. BRADY:

11 Q Good afternoon, Zack -- Tom. I'm Sean  
12 Brady.

13 A Good afternoon.

14 Q I have in front of me your rebuttal  
15 testimony which is Exhibit G and as I understand, you  
16 have corrected that as far as your title is now  
17 director of gas and light services; is that correct?

18 A That's correct.

19 Q Okay. Are your responsibilities still  
20 directing activities of gas supply planning, gas  
21 supply administration, gas control and gas storage  
22 departments from both respondent and North Shore Gas

1 Company?

2 A No, they change a little bit. The -- with  
3 the reorganization the gas light planning and gas  
4 administration departments were merged and they do  
5 report to me still. Gas control and gas storage no  
6 longer report to me and then HUB services reports to  
7 me.

8 Q All right. Thank you.

9 Would you -- you had described earlier  
10 with Ms. Soderna -- I'm sorry, Mrs. -- do you recall  
11 that? You were describing what HUB services was?

12 A Yes.

13 Q Do you know which department, at the time  
14 of the reconciliation period, kept track of the  
15 inventory levels used for HUB services?

16 A I believe it was gas supply administration.  
17 But, again, I wasn't there so I can't say for  
18 certain.

19 Q Let me ask -- did you say gas supply  
20 services --

21 A If I can --

22 Q -- administration?

1           A     I meant gas light administration.

2           Q     Okay. Which is under your direction  
3 currently; correct?

4           A     Yes.

5           Q     Does the current gas supply administration  
6 keep track of inventory levels in MANLOVE?

7           A     Yes, along with the HUB services area.

8           Q     Okay. And is there any reason to believe  
9 that that may have -- that function may have changed  
10 since 2001?

11          A     It may have. There was a number of changes  
12 at the company.

13          Q     Do you know how gas supply administration  
14 keeps track of the volume of gas that HUB services  
15 was using during the reconciliation period?

16          A     I don't know how they were keeping track of  
17 it, no.

18          Q     Has the method in which gas supply  
19 administration has been keeping track of the  
20 inventory levels changed since you've been in your  
21 position as director of gas supply?

22          MS. KLYASHEFF: Objection. Relevance of

1 something that happened after the reconciliation  
2 period.

3 JUDGE SAINOT: What's the relevance?

4 MR. BRADY: I'm trying to understand how  
5 Peoples Gas - the gas supply tracked -- the gas  
6 supply department or division tracked the gas supply.

7 It's my understanding that Mr. Zack  
8 has replaced Mr. Delara (phonetic) who was the gas  
9 supply director at the time of the reconciliation  
10 period. It is also my understanding there's -- that  
11 Mr. Delara is no longer submitting testimony in this  
12 case. And so I thought Mr. Zack would be the one who  
13 might have that information as far as how gas supply  
14 kept track of inventory levels for that period.

15 JUDGE SAINOT: And he's saying he doesn't  
16 know. I mean, is that -- am I wrong, Counsel, that  
17 that's what he just said before the answer?

18 MS. KLYASHEFF: No, the way he said it was  
19 before he was in the department and he doesn't know.

20 JUDGE SAINOT: Yeah. Yeah. I just don't see  
21 how you can get it out of that witness.

22 MR. BRADY: All right. Then I'll move on.

1 JUDGE SAINCOT: Okay.

2 BY MR. BRADY:

3 Q Mr. Zack, if you could turn to Exhibit G,  
4 page 17. At the bottom of the paragraph on the  
5 bottom of page 17 starting with, at least in my  
6 documents, starting with line number 364. You were  
7 talking about the analysis of Mr. Effron and  
8 Mr. Rearden.

9 Do you see that in your testimony?

10 A Yes.

11 Q And then in the third sentence in the  
12 paragraph it says, Such relatively small proposed  
13 adjustments in the context of a complex contract  
14 represents a difference of opinion about the cost and  
15 benefits of a contract in the states -- staffs and  
16 the AG's struck conclusions that the GPAA is clearly  
17 imprudent. Do you see that?

18 A I see that.

19 Q What criteria were you using when you made  
20 this statement that this represents more than a  
21 difference of opinion or that it represents a  
22 difference of opinion?

1           A     The context of that statement has to do  
2     with there was a lot of detailed analysis purported  
3     to be done by Staff to get to a disallowance amount  
4     that amounted to in the area of 1 -- 1 to 2 percent  
5     that they stated that the contract amount was  
6     imprudent by.

7                     Given the context that in the 2000  
8     case another witness for Staff, who performed, again,  
9     according to the order, a full review and used the  
10    correct standard for prudence and he had a difference  
11    of opinion, thought their gas costs were prudent and  
12    he must've looked at this contract, because it was 75  
13    percent of our gas cost that year. Given that  
14    context that that's a difference of opinion and that  
15    given what we knew at the time this contract -- that  
16    is, scenarios that Mr. Graves will test- -- has  
17    testified to in three of the four Sera cases  
18    (phonetic), it showed that the contract was prudent.

19                    To then use such a sharp pencil to say  
20    that you were 1 or 2 percent away from it being  
21    prudent, does not seem reasonable. It, to me, falls  
22    under -- it shows that there are differences of

1 opinion even within Staff and by -- when we used the  
2 information that was available at the time.

3 Q To your knowledge, is there a -- has the  
4 ICC actually set a standard defining difference of  
5 opinion?

6 A Not to my knowledge.

7 Q Do you believe that the ICC should have a  
8 standard that defines what a difference of opinion is  
9 for PGA cases?

10 A I don't know that I have an opinion about  
11 that.

12 Q Do you see in the same page, Mr. Zack,  
13 lines 360 to 363?

14 A Yes.

15 Q An example of -- if a consumer bought a one  
16 dollar item at one store, a similar item for 99 cents  
17 on the street, the purchase of a one dollar item  
18 would be considered imprudent; do you see that?

19 A I see that.

20 Q Do you recall your logic that you had used  
21 in developing that opinion at this time?

22 A Again, it was just a relative comparison



1     that they were saying it was a -- within a couple of  
2     percent of being -- 1 or 2 percent of being prudent.

3             Q     Let me ask you a hypothetical to try and  
4     understand what you are saying here.

5                     What if a consumer were to buy a car  
6     and one dealer's list price was \$50,000 and across  
7     the street another dealer, who had the same car, was  
8     selling it for 1 percent less, \$49,500.

9                     Would it be prudent for the consumer  
10    to walk across the street to purchase that car?

11            A     It wouldn't be imprudent for him not to, I  
12    would believe.

13            Q     But that wasn't my question. My question  
14    was, is it imprudent for the consumer to walk across  
15    the street to purchase a car that was \$500 or 1  
16    percent less expensive?

17            A     I guess in my view either option would be  
18    prudent.

19            Q     And why would either option be prudent?

20            A     Because to that consumer it -- there may be  
21    other variables involved that that consumer may  
22    have -- be considering.

1 MR. BRADY: Staff has no further questions,  
2 your Honor.

3 JUDGE SAINSOT: Anyone else?

4 I have a few questions.

5 EXAMINATION

6 BY

7 JUDGE SAINSOT:

8 Q Mr. Zack, I'm looking at Respondent's  
9 Exhibit G, which is your rebuttal testimony, on page  
10 18, and you're talking through several pages or at  
11 least more than two, about Mr. Lounsberry's  
12 testimony.

13 And, you know, just for the record  
14 Mr. Lounsberry has -- his pretrial testimony concerns  
15 what went on in the previous reconciliation.

16 Were you involved in that previous  
17 reconciliation?

18 A No, I wasn't.

19 Q So you have no personal knowledge of the  
20 banter between Staff and Peoples' witnesses?

21 A No, not of that. No.

22 Q Or any discussions either?